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4 JAMES CARL KELLY,
5 Plaintiff,
6 v.
7 T. ALLEN, et al.,
8 Defendants.
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10 Case No. [23-cv-00966-JST](#)
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13 **ORDER DENYING REQUEST FOR
14 RECONSIDERATION OF DENIAL OF
15 IN FORMA PAUPERIS STATUS;
16 DISMISSING ACTION FOR FAILURE
17 TO PAY FILING FEE IN FULL**
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19 Re: ECF Nos. 10, 11, 12
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21 Plaintiff filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. For the reasons
22 set forth below, the Court DENIES Plaintiff's request for reconsideration of the Court's denial of
23 *in forma pauperis* status, ECF No. 10; DISMISSES this action for failure to pay the filing fee; and
24 DENIES the remaining motions as moot.
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26 **DISCUSSION**
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28 On or about March 3, 2023, Plaintiff commenced this action by filing a complaint against
various Salinas Valley State Prison correctional officials, regarding events that allegedly took
place in 2021 and 2022. *See generally* ECF No. 1. On April 13, 2023, the Court ordered Plaintiff
to show cause why he should not be denied leave to proceed *in forma pauperis* pursuant to the
three-strikes provision set forth in 28 U.S.C. § 1915. ECF No. 5. The Court found that Plaintiff
has had at least three cases dismissed as either frivolous, malicious, or for failure to state a claim,
and that he had not plausibly alleged that he was in imminent danger of serious physical injury at
the time he commenced this action. ECF No. 5 at 2-3.¹ In response, Plaintiff filed three
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31 ¹ Plaintiff has filed at least fourteen civil rights in this district and has also filed a number of cases
32 in the Eastern District of California. Plaintiff has been denied leave to proceed *in forma pauperis*
33 pursuant to 28 U.S.C. § 1915(g) in at least ten cases in this district. *See* ECF No. 5 at 1-2 (listing
34 cases).
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1 pleadings: ECF Nos. 6, 7, 8. In these pleadings, Plaintiff requested camera footage, an extension
2 of time to respond to the Order to Show Cause, and guidance on how to respond to court orders;
3 alleged that his case was meritorious because he had been successful in prior cases; reiterated that
4 he lacked funds to pay the filing fee; and requested appointment of counsel. ECF Nos. 6, 7, 8.
5 On May 25, 2023, the Court denied Plaintiff leave to proceed *in forma pauperis* pursuant to the
6 three-strikes provision set forth in 28 U.S.C. § 1915, because Plaintiff had suffered three strikes
7 within the meaning of Section 1915 and Plaintiff had not plausibly alleged that he was in
8 imminent danger of serious physical injury at the time he commenced this action. ECF No. 9.
9 The Court ordered Plaintiff to pay the \$402 filing and administrative fee in full by June 22, 2023,
10 or face dismissal of this action. *Id.*

11 **I. Motion for Reconsideration**

12 Plaintiff has filed a pleading titled, “Objections,” which the Court construes as a motion
13 for reconsideration of the Court’s denial of *in forma pauperis* status. ECF No. 10. However, the
14 motion alleges only that the Court misidentified the case cited in Plaintiff’s pleading ECF No. 7,
15 incorrectly listing the case as 2:08-cv-ct-01823 CTF when the correct case number is as 2:08-cv-
16 ct-01823 CTB; that he is still requesting the video camera footage from July 23, 2022; that he
17 requests appointment of counsel prior to appealing this case; that this action was filed on or about
18 February 27, 2023; and that he recently filed a state habeas petition regarding incidents at
19 California State Prison Sacramento. ECF No. 10. Because none of these allegations and requests
20 satisfy the requirements for reconsideration, Plaintiff’s motion for reconsideration is denied.
21 Plaintiff has not challenged the Court’s conclusions that he has suffered three strikes within the
22 meaning of Section 1915 and has not plausibly alleged that he was in imminent danger of serious
23 physical injury at the time he commenced this action.

24 **II. Dismissal of Action for Failure to Pay Filing Fee in Full**

25 The deadline to pay the filing fee in full has passed, and Plaintiff has not paid the filing
26 fee. The Court therefore DISMISSES this action for failure to pay the filing fee in full. This
27 dismissal is without prejudice to filing a request to reopen, but any request to reopen must be
28 accompanied by the full filing and administrative fees.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for reconsideration, ECF No. 10, is DENIED, and this action is DISMISSED without prejudice for failure to pay the filing fee in full. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff, terminate all pending motions as moot, and close the case.

This order terminates ECF Nos. 10, 11, 12.

IT IS SO ORDERED.

Dated: August 2, 2023



JON S. TIGAY
United States District Judge

United States District Court
Northern District of California